



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 4 OF 2007

IN THE MATTER OF THE ESTATE OF HOSEA SAKWA SILUNYA (DECEASED)

ANNE KABEKA SAKWA.....APPLICANT

VERSUS

CHARLES TEMBA SAKWA.....1ST RESPONDENT

FRANCIS AMULIOTO SAKWA.....2ND RESPONDENT

RULING

1. The deceased Hosea Sakwa Silunya died intestate on 1st February 2006. He was survived by the following children: -

- a. Warren Omongo Hosea Sakwa;
- b. Monica Ngota Silunya;
- c. Doris Musieka Hosea;
- d. Ruth Amimo Muhaka;
- e. Charles Temba Sakwa (1st respondent);
- f. Lorna Awinja Sakwa;
- g. Francis Amulioto Sakwa (2nd respondent);
- h. Patrick Ndoli Sakwa;
- i. Hellen Atuo Sakwa;
- j. Simon Silunya Sakwa;
- k. Jenifer Anindo Sakwa;
- l. Jessy Mutahi Sakwa;
- m. Felista Omito Sakwa;
- n. Anne Kabeka Sakwa (applicant); and

o. Elizabeth Lumwenyi Sakwa.

2. On 29th November 2007 a petition was filed for the grant of letters of administration. A joint grant was issued on 9th April 2008 to Warren Omongo Hosea Sakwa, 1st respondent, 2nd respondent and Patrick Ndoli Sakwa. On 8th May 2019, following various applications, the court convened a meeting of the family regarding the administration of the estate of the deceased. Following the meeting, the earlier grant was revoked and a fresh joint grant issued in the names of the respondents, Ruth Amimo Muliaka and the applicant.

3. When the petition was filed, it was disclosed that the estate of the deceased comprised:-

- i. LR No. ****Nairobi, Eastleigh;
- ii. LR No. ****Nairobi, Eastleigh;
- iii. LR No. ****Nairobi, Eastleigh;
- iv. LR No. ****Nairobi, Eastleigh;
- v. LR No. ****Nairobi, Eastleigh;
- vi. LR No. ****Nairobi, Eastleigh;
- vii. LR No. ****Nairobi, Eastleigh;
- viii. LR No. ****Nairobi, Eastleigh;
- ix. LR No. ****Nairobi Mlango Kubwa;
- x. LR No. ****Nairobi Mlango Kubwa;
- xi. LR No. ****Nairobi Mlango Kubwa;
- xii. Plot No. **** Dandora;
- xiii. Kisumu Municipality/Block ****;
- xiv. Plot No. **** Bunyore;
- xv. Plot at Mwilonje, Bunyore;
- xvi. Nairobi city Council House No. ****, ****;
- xvii. East Bunyore/Ebusiratsi/****;
- xviii. East Bunyore/Ebusiratsi/****;
- xix. East Bunyore/Ebusiratsi/****;
- xx. East Bunyore/Ebusiratsi/****;
- xxi. East Bunyore/Ebusiratsi/****;
- xxiii. East Bunyore/Ebusiratsi/****;
- xxiv. East Bunyore/Ebusiratsi/****;
- xxv. East Bunyore/Ebusiratsi/****;
- xxvi. East Bunyore/Ebusiratsi/****;
- xxvii. East Bunyore/Ebusiratsi/****;
- xxiii. East Bunyore/Ebusiratsi/****;
- xxix. East Bunyore/Ebusiratsi/;

- xxx. East Bunyore/Ebusiratsi/;
- xxxi. East Bunyore/Ebusiratsi/
- xxxii. Kisa Mwikalika/****;
- xxxiv. KCB Eastleigh Branch A/C No. ****;
- xxxv. KCB Moi Avenue Branch A/C No. ****;
- xxxvi. KCB City Centre Branch A/C No. ****;
- xxxvii. HFCK Rehani House A/C No. ****;
- xxxiii. EABS Bank Kisumu A/C No****;
- xxxix. Post Bank A/C No. KTEM **** (KYYY ****);
- xxxx. Bank of Baroda, Nairobi Main A/C No. ****;
- xxxxi. Bank of Baroda, Nairobi Main A/C No. ****;
- xli. Barclays Bank Kisumu A/C No. KU/****;
- xlii. Reliance Bank Kisumu A/C No. ****;
- xliii. Credit Finance Kisumu A/C No. ****;
- xliv. EABS Bank Fixed Deposit Cert. No. ****;
- xlv. HFCK Housing Development Bond A/C No. ****_****;
- xlvi. East Africa Breweries Ltd Shares A/C No. ****;
- xlvii. HFCK Shares A/C No. ****;
- xlviii. BAT Shares A/C No. ****;
- xliv. Peugeot Saloon KLL ****;
- l. Canter Lorry KTW ****;
- li. Dacia Double Cabin Pickup KAP ****C;
- lii. Dacia Double Cabin Pickup KAG ***G;
- liii. Ford Tractor KLG ****;
- liv. 7 Tonne Trailer ZA ****;
- lv. 3 plat Ploughing Jembe; and
- lvi. 12 plate ploughing Jembe.

4. The ruling relates to an application dated 24th July 2020 by the applicant. The application was brought under **section 47** of the **Law of Succession Act (Cap 10)** and **rule 73** of the **Probate and Administration Rules**. She was joined by Ruth Amimo Muhala in the application which was supported by all the other beneficiaries except the respondents. The application sought that the courts partially confirms the grant to allow some of the properties in the estate to be sold and the proceeds of each property be shared equally, to enable each beneficiary to get 1/16th share. The specific properties were three in respect of which the deponents indicated they had found ready buyers. They are LR No. ****Garage Eastleigh, Nairobi LR No. ****New Pumwani Estate, Nairobi; and LR No. ****New Pumwani Estate, Nairobi. There was an offer for Kshs.100,000,000/= for the LR No. ****; Kshs.93,000,000/= for LR No. ****; and Kshs.110,000,000/= for LR No. ****.

5. The second prayer was that the respondents be removed as administrators of the estate of the deceased because they were intermeddling in the estate of the deceased by, among other things, collecting rent and failing to account; two, laying claim to the properties in the estate, and,

three, refusing to come along in the administration of the estate; by not wanting to participate in the intended sale. The last prayer was that the respondents had refused to surrender the original title documents and logbooks of the estate property into court as was, by consent, ordered by the court on 26th November 2019. The respondents having refused to surrender these documents into court, the applicant sought that the Deputy Registrar of the Court be authorized to sign all agreements, mutations, transfers and other instruments relating to the property above.

6. In the supporting affidavit jointly sworn by the applicant and Ruth Amimo Mukala, they complained that the respondents had since the year 2007 been administrators of the estate of the deceased but had failed and or refused to have the grant confirmed to have each beneficiary benefit from the estate of their deceased father. It was alleged that the respondents were the only ones utilizing and benefiting from the estate to the exclusion of the other beneficiaries. These beneficiaries had financial obligations which could not be met because of the conduct of the respondents. It was stated that all the 14 beneficiaries had sat and agreed that they have the grant partially confirmed to enable the sale of the three properties and the proceeds for each shared equally among all the 16 beneficiaries. The respondents had declined to come along. The applicant and the 13 beneficiaries had found ready buyers. By order of the court, all the properties had been valued. The applicant pointed out that in the pending application for confirmation filed by the respondents they had proposed that these properties be each shared in the ratio of 1:16 and therefore there should be no reason why they should oppose the sale.

7. The applicant further stated that, as evidence of intermeddling with the estate, the respondents were laying claim to some of the estate properties; and that they were receiving rent which they were not accounting for. This was despite the court order issued on 22nd May 2019, and which was by consent, that rent be collected by Florin Enterprises.

8. The 1st respondent opposed the application. He stated that following the court order dated 8th May 2019 each beneficiary was receiving Kshs.25,000/= from the estate. Further, following the order of 26th November 2019, LR **** was sold to clear estate debts and bills and therefore the joint grant was now ready for confirmation. He opposed any partial confirmation or sale at this stage. He asked that the grant should be confirmed, as any sale now would offend **section 82(b)** of the **Act**. He asked that the court does give a hearing date for confirmation. He stated that he had surrendered the title documents and logbooks to their advocate M/s Susan Juma Nyang for onward transmission to the court. He denied receiving any rent, except for rent from CDF Emuhaya which he had received and used to maintain the estate. He stated that in his pending application for confirmation he had proposed equal distribution of the estate in the ratio of 1:16 but was opposed to any sale of any of the estate. The audit report filed by Ronald LLP accused him of having misappropriated part of the estate, but he denied this. Lastly, he stated that he was opposed to the request that he be removed as an administrator.

9. The 2nd respondent opposed the application. He stated that he had surrendered the title documents to properties of the estate to his advocates but subsequently it was agreed that the documents be jointly held by all the advocates in the case. He denied that any beneficiary was suffering any financial difficulties, now that each was receiving Kshs.25,000/= monthly and had also benefitted from the sale of LR No. ****. He denied that they were laying any claim to the estate. He clarified that they had proposed to the other beneficiaries that they were interested in certain properties. Otherwise, each wanted the estate shared equally. He stated that the deceased had in 1997 put him in possession of LR No. **** which he had improved by constructing extra rental and commercial units, an investment of Ksh.3,000,000/=. He had entered lease agreement with tenants which had not expired. He denied that he had intermeddled with any estate property, and denied that he was collecting any rent. He had, since the court order, handed over collection of rent to Florin Enterprises, he said. He denied that they were party to the alleged sale transactions and denied attending any meeting to discuss the intended sale. He opposed the sale and asked the applicant and the other siblings to wait for the grant to be confirmed. He stated that he had fully cooperated in the administration of the estate of the deceased. He was willing to surrender his interest in the rest of the estate to be able to get LR No. ****.

10. The respondents were represented by M/s Nyang and Mr. Gachimu, the applicant by Mr. Wati and Ruth Amino Muhaka by M/s Ndungu. Counsel filed written submissions which I have considered.

11. The initial grant was issued to the respondents on 9th April 2008. **Section 83** of the **Act** provides for the duties of the personal representatives of the estate of the deceased person. It provides as follows: -

“83. Personal representatives shall have the following duties—

- a. to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;**
- b. to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;**
- c. to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);**
- d. to ascertain and pay, out of the estate of the deceased, all his debts;**
- e. within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;**
- f. subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be.”**

12. When I convened a meeting of the parties in my chambers on 8th May 2019 there were two main complaints being raised by the beneficiaries against the respondents. One, since the grant was issued the respondents had refused to apply for the confirmation of the grant, and, two, the respondents were the only ones benefiting from the estate. After a long discussion, it was agreed that the grant be revoked and a fresh one issued in which the respondents were to be joined by the applicant and Ruth Amimo Muhaka. Each beneficiary was to begin receiving KShs.25,000/= per month from the estate; the estate was to be managed by an estate agent; the estate was to be valued; and the estate was to be audited. These were necessary steps towards the distribution of the estate of the deceased who died on 1st February 2006, and grant issued on 9th April 2008!

13. The law expected the respondents to be accountable and transparent to the beneficiaries and to court in the management of the estate of the deceased. The law expected that within six months from the date of the grant, the respondents apply for the confirmation of the grant and to provide a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of that account. For over eleven (11) years there was no application to confirm the grant, and there was no account. Secondly, the audit conducted, at the court's instance, by Ronald's LLP revealed that the respondents had collected large sums in rent over the years and could not account for a substantial part of the money. Secondly, the respondents had sold the vehicles, tractors and had not accounted for the proceeds. In my considered view, when a personal representative collects rent paid over the estate property and fails to account for the same he has intermeddled with the estate property, and that is an offence under **section 45** of the **Act**. If he sells a vehicle belonging to the estate and fails to account for the money he has intermeddled with the estate.

14. I appreciate where the applicant (on behalf of the rest of the beneficiaries) is coming from when she asks that the respondents be removed as administrators of the estate of the deceased, and that there be partial confirmation of the grant in respect of three properties in respect of which they have found buyers. They want the properties sold so that each of the 16 beneficiaries benefits equally from the proceeds. This is notwithstanding the pain that the respondents have caused to the beneficiaries over the years. They will benefit equally. There is no indication that the prices proposed by the buyers are lower than the values of the properties.

15. The principle that when the estate is finally shared it will benefit the beneficiaries equally has been embraced by both the respondents and the rest of the beneficiaries, including the applicant. When the respondents finally applied for the confirmation of the grant on 28th October 2019 (and it is material that they have since not sought to list the application for hearing) they proposed, in respect of the commercial properties including the three properties in question, that each be equally shared by the 16 beneficiaries. The proposal of the applicant in her quest for partial confirmation is that each of the three properties be sold to a ready buyer and the proceeds shared equally among the 16. All the beneficiaries, except the respondents, supports that partial confirmation.

16. The respondents want to wait for the confirmation of the grant. There is certainly bad blood in the family, with the respondents on one side and the applicant and the other beneficiaries on the other side. The reason for the bad blood is the manner in which the estate has been administered by the respondents. How can, in those circumstances, all the 16 beneficiaries be made to be registered to jointly own each of these properties? It must be recalled that these properties belong to the deceased, and not to the respondents or the other beneficiaries including the applicant. The sooner each beneficiary gets his or her cut and moves on the better.

17. In opposing the application, the 2nd respondent stated that he had substantially improved LR **** and that he will want the final distribution to bear this in mind. This was disputed by the applicant. It is material that when the respondents filed this petition, they gave a list of the properties of the deceased. This property was one of them. When the respondents filed application to confirm the grant, they listed this property and proposed that each beneficiary shall equally benefit from it. The 2nd respondent cannot be allowed, this later in the day, to claim a portion of LR No. ****. This is the deceased's property to which each of the 16 beneficiaries has an equal claim.

18. The last thing raised by the application was that the respondents had failed to surrender into court the original title deeds and logbooks. This is despite a court order. There is no dispute that the items have not been surrendered to court. The respondents tried to explain this failure by saying that they had surrendered the documents to their advocates who had entered some arrangement with the advocates on the other side. With respect, the obligation was to court. The obligation was not honored. I expected that, as a matter of good faith, once the complaint was made the respondents would immediately surrender the documents to court. That was not done.

19. In conclusion, I find the application is merited. I allow the partial confirmation of the grant issued to the respondents, the applicant and Ruth Amimo Muhaka on 8th May 2019 in respect of LR No. **** Garage Eastleigh, Nairobi; LR No. **** New Pumwani Estate, Nairobi; and LR No. **** New Pumwani Estate, Nairobi. Each of the properties shall be sold to the buyer already identified at the specified price, and the proceeds shared equally among the sixteen (16) beneficiaries.

20. The respondents shall within 7 days sign all the necessary documents of sale and transfer, failing which the Deputy Registrar of this Court shall sign on their behalf.

21. I found the respondents guilty of intermeddling and deserving to be removed as administrators. However, under **section 47** of the **Act** and **rule 73** of the **Probate and Administration Rules** and in bid to allow for the final distribution of the estate, I will allow them to continue to participate in the administration of the estate.

22. I direct that the applicant and the other beneficiaries do file a response to the application for confirmation dated 28th October 2019 by the respondents within 30 days from today. The application shall be mentioned on 7th December 2020 to give direction on its hearing.

23. The respondents shall pay the costs of this application.

DATED and DELIVERED ELECTRONICALLY at NAIROBI this 14TH day of OCTOBER 2020.

A.O. MUCHELULE

JUDGE